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June 30, 2000

Office of the Branch Chief  
Processed Products Branch  
Fruit and Vegetable Programs  
Agricultural Marketing Service  
U.S. Department of Agriculture  
P.O. Box 96456  
Room 0709, South Building  
Washington, D.C. 20090-6456

Dear Sir or Madam:

This letter seeks to comment on the proposed rules revising the regulations governing the inspection and certification of processed fruits, vegetables, and processed products made from them by increasing by approximately three to nine percent the fees charged for the inspection services. The proposed rule and request for comments were found on page 39824 of the June 28, 2000 edition (Volume 65, Number 125) of the *Federal Register*. I am writing this letter to fulfill an assignment for an administrative law class I am taking currently at the University of Washington School of Law.

The purpose of this comment is to suggest that having reviewed the Administrative Procedures Act, the Agricultural Marketing Act of 1946, and the Regulatory Flexibility Act of 1980, I surmised that the notice was in compliance with the relevant provisions of these Acts. My only other concern is to wonder what specific cost-reducing alternatives were considered to offset the increases in employee salaries and inflation and to maintain the fiscal stability of the program.

It appears the notice provided of this proposed rules revising the inspection and certification regulations is in compliance with § 553 of the Administrative Procedure Act (5 U.S.C. § 553). § 553(b) requires that "(g)eneral notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law." Given that the notice is intended for the broad class of food producers who utilize the voluntary inspection service, the form of notice appears to be in compliance with § 553(b).

The agency's authorization to provide the inspection and certification services appear to originate from § 1622 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622). Section 1622 describes the duties allocated to the Secretary of Agriculture. Section 1622(h) indicates the Secretary is directed and authorized "(t)o inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end

that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire, except that no person shall be required to use the service authorized by this subsection.” Therefore the agency’s authorization to provide for these voluntary inspection and certification services is unquestioned as the authorization is specified in this particular subsection of the Act.

The notice indicates that anticipated increased financial obligations in FY 2000 necessitate the fee increases in order to cover costs and maintain adequate reserves. Subsection 1622(h) further indicates that “(a)ny fees collected under this subsection, late payment penalties, the proceeds from the sales of samples, and interest earned from the investment of such funds shall be credited to the trust fund account that incurs the cost of the services provided under this subsection and shall remain available without fiscal year limitation to pay the expenses of the Secretary incident to providing such services.” This portion of the subsection underscores the relevance of adequate fee income to the provision of inspection and certification services to be provided.

The notice provided of the proposed rule regarding fee increases appears to be consistent with the relevant requirements governing such notices as found in the Regulatory Flexibility Act of 1980 (5 U.S.C. § 603). Subsection 603(a) indicates that “(w)henver an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule...the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities.” Such an analysis was provided in the public notice. Subsection 603(b) indicates the initial flexibility regulatory analysis will likewise include some justification of the action, a brief statement of objectives, an estimate of the small entities to be impacted, a description of the proposed rule’s compliance requirement impacts, and an identification of the Federal rules affecting in some manner the proposed rule. The notice addressed all of these issues. The notice indicated that “a small portion” of the more than 1,250 user of the Processed Products Branch lot were “...small entities under the criteria established by the Small Business Administration” and that “no additional reporting, recordkeeping, or other compliance requirements (will be) imposed upon small entities as a result of this proposed rule.”

I conclude that the public notice in the *Federal Register* regarding the proposed fee increases for the voluntary inspection and certification programs was adequate to satisfy the relevant subsection of the Administrative Procedural Act regarding such notices, that the agency is indeed authorized to provide these voluntary inspection and certification programs per subsection 1622(h) of the Agricultural Marketing Act of 1946 (7 U.S.C. § 1622), that the Agricultural Marketing Act of 1946 explains that the trust fund utilized to collect fee revenues will also be used to fund these same services, and that an initial regulatory flexibility analysis is provided per the Regulatory Flexibility Act of 1980 (5 U.S.C. § 603).

My chief question as I review the notice provided is: What cost-saving actions were considered as alternatives to the proposed fee increases? While the proposed fee increases appear relatively minimal and their impacts on the users of the inspection and certification programs appear to have been thoughtfully considered, I wonder what cost-saving practices might have been considered to avoid these fee increases.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher M. Mettler". The signature is written in a cursive, flowing style.

Christopher M. Mettler

